



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JERYLAN MARQUEZ-ORTIZ,

Plaintiff,

- against -

UNITED STATES OF AMERICA,

Defendant.
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20-CV-5793 (JPO) (RWL)

ORDER

ROBERT W. LEHRBURGER, United States Magistrate Judge.

Plaintiff's request for a conference in advance of making a motion for spoliation (Dkt. 72) is denied as premature without prejudice. Discovery is ongoing, and it is clear from the correspondence that Plaintiff does not at this time have a good faith basis for proceeding with a spoliation motion. Aside from it being indefinite whether a video of the incident ever existed (see Dkt. 75-1 (former criminal counsel merely was "informed" that the fall was captured on video, without any indication of by whom or how he was informed)), there is no basis to establish every element required to prove spoliation for substantially the reasons set forth in Defendant's September 23, 2022 response at Dkt. 75. Plaintiff's reply at Dkt. 76 is not at all persuasive as it repeatedly distorts Defendant's response. For instance, Defendant's response does not say that such video if it existed would be "irrelevant"; it does not suggest that such video might actually exist; and it does not take the position that the responsibility to preserve is triggered only when an injured person makes a request to do so. In any event, Plaintiff is incorrect that the incident alone triggered an obligation to preserve any video, which, if such video ever existed, would have been overwritten as a matter of standard operating procedure every 14-28 days. To the extent further discovery

yields facts to support a good faith spoliation claim, Plaintiff may renew his request at that time.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. Lehrburger', with a long horizontal stroke extending to the right.

ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: September 26, 2022
New York, NY

Copies transmitted this date to all counsel of record.